

# Memorandum



**Date:** December 4, 2007

**To:** Honorable Chairman Bruno A. Barriero and  
Members, Board of County Commissioners

**From:** George M. Burgess  
County Manager

Supplement to  
Agenda Item No. 8(R)3a

**Subject:** Supplemental Report: Miami-Dade Water and Sewer Department Construction  
Contract Award No. 825(A): South District Wastewater Treatment Plant High  
Level Disinfection Upgrade to 285 Million Gallons per Day; Temporary Office  
Facilities

On October 16, 2007, the above referenced contract award in the amount of \$11,110,940.05 was withdrawn from the Board of County Commissioner's (BCC) agenda because a "Bid Protest" was filed by the low bidder, Central Florida, Inc. The County had declared the bid submitted by Central Florida, Inc. to be non-responsive as the County contended that the bid bond submitted by Central Florida, Inc. was incomplete, consequently, the second low bidder, Harry Pepper and Associates, Inc. was recommended for award on the October 16, 2007 BCC agenda.

The issue for determination by the Hearing Examiner was whether the County's decision to declare the bid submitted by Central Florida, Inc. to be non-responsive was in anyway illegal, dishonest or fraudulent. The final hearing for the bid protest was held on October 30, 2007 in accordance with Section 2-8.4 of the Miami-Dade County. After reviewing the case, the Hearing Examiner recommended that the award recommendation to Harry Pepper & Associates, Inc. be upheld. A copy of the "Report and Recommendations of Hearing Examiner" is attached for your information.

  
Assistant County Manager



**Harvey Ruvin**  
CLERK OF THE CIRCUIT AND COUNTY COURTS  
Miami-Dade County, Florida

**CLERK OF THE BOARD OF COUNTY COMMISSIONERS**  
STEPHEN P. CLARK MIAMI-DADE GOVERNMENT CENTER

SUITE 17-202  
111 N.W. 1st Street  
Miami, FL 33128-1983  
Telephone: (305) 375-5126  
Fax: (305) 375-2484

November 15, 2007

Joseph W. Lawrence, II, Esq.  
Vczina, Lawrence & Piscitelli, P.A.  
The Museum Building  
300 S.W. First Avenue, Suite 150  
Fort Lauderdale, Florida 33301

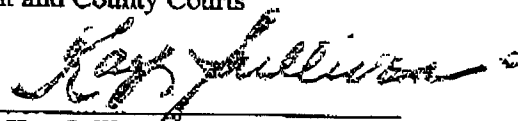
Re: Bid Protest – Contract No. S-825(A)  
South District Wastewater Treatment Plant HLD Upgrade to 285 MGD  
Temporary Field Office Facilities

Dear Mr. Lawrence:

Pursuant to Section 2-8.4 of the Code and Administrative Order 3-21, forwarded for your information is a copy of the Findings and Recommendations filed by the hearing examiner in connection with the foregoing bid protest which was held on October 30, 2007.

Should you have any questions regarding this matter, please do not hesitate to contact this office.

Sincerely,  
HARVEY RUVIN, Clerk  
Circuit and County Courts

By   
Kay Sullivan, Director  
Clerk of the Board Division

KS:dc  
Attachment

cc: George Burgess, County Manager (via facsimile)  
Henri Sori, Executive Assistant, County Manager's Office (via facsimile)  
Hugo Benitez, Assistant County Attorney (via facsimile)  
Henry Gillman, Assistant Co. Attorney (via facsimile)  
Miriam Singer, Director, DPM (via facsimile)  
Walter Fogarty, DPM (via facsimile)  
John Renfrow, Director, Miami-Dade Water & Sewer Department (via facsimile)  
John W. Chorlog, Jr. Contract Manager, Miami-Dade Water & Sewer Department (via facsimile)  
Alma M. Santiago, P.E., Project Manager, Miami-Dade Water & Sewer Department (via facsimile)  
Harry Pepper & Associates, Inc. (via facsimile)  
Metro Equipment Service, Inc. (via facsimile)  
Central Florida Equipment Rentals, Inc. (via facsimile)

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## REPORT AND RECOMMENDATIONS OF HEARING EXAMINER

CLERK OF THE BOARD  
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CLERK OF DISTRICT COURT  
DADE COUNTY, FLA.  
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### A. PRELIMINARY STATEMENT

1. This case concerns a protest filed by Central Florida Equipment Rentals, Inc. ("Central") challenging the County Manager's recommendation to award the contract for Temporary Office Facilities at the South District Wastewater Treatment Plant for the High Level Disinfection Upgrade pursuant to a Consent Order with the Florida Department of Environmental Protection.
2. The final hearing took place on October 30, 2007 in accordance with Section 2-8.4 of the Code of Miami-Dade County. Testimony was received from witnesses for both the County and Central.
3. All participants were represented by legal counsel. Joseph Lawrence represented Central. Henry Gillman represented Miami-Dade County. David Garvin represented intervener Harry Pepper and Associates, Inc.

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B. ISSUE

4. The issue for determination is whether the County acted arbitrarily, illegally, dishonestly, or fraudulently in determining that the bid submitted by Central was not responsive, as County staff is not in possession of the first page of the prescribed form of bid bond submitted by Central.

C. LEGAL STANDARDS FOR REVIEW OF COMPETITIVE BIDDING

5. In *Department of Transportation v. Groves-Watkins Constructors*, 530 So.2d 912, 913 (Fla. 1988), the Florida Supreme Court clearly stated: [A] public body has wide discretion in soliciting and accepting bids for public improvement and its decision, when based on an honest exercise of this discretion, will not be overturned by a court even if it may appear erroneous and even if reasonable persons may disagree." (Quoting and adopting standard from *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So.2d 505, 507 (Fla. 1982)(emphasis added). It has been established in Florida that "absent a showing of illegality, fraud, oppression or misconduct" a public agency's exercise of discretion cannot be disturbed. *Liberty*, 421 So.2d at 507; *Central Florida Equipment Rentals of Dade County, Inc. v. Dunn*, 586 So.2d 1171, 1172 (Fla. 3<sup>rd</sup> DCA 1991). However, the County, as a matter of law, lacks the discretion to award a contract to a bidder whose bid contains a material

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deviation from the contract requirements. *Harry Pepper & Associates v. City of Cape Coral*, 352 So.2d 1190, 11932 (Fla. 3<sup>rd</sup> DCA 1977). A deviation in a bid is material if it destroys its competitive character of the bid by giving the bidder an advantage or benefit not enjoyed by the other bidders or if it deprives the County of assurances that the contract will be executed or performed. *Robinson Elec.Co., Inc. v. Dade County*, 417 So.2d 1032, 1034 (Fla. 3<sup>rd</sup> DCA 1982).

#### D. FINDINGS OF FACT

6. The Instructions to Bidders required the submission of a bid bond on the County's prescribed form.
7. Central requested its bonding agent to prepare and execute a bid bond prior to bidding.
8. The first page of the prescribed form of bid bond that was submitted by the bonding agent and which includes the terms binding the surety to the County including the penal sum had the wrong contract number and was thrown away by Central's personnel.
9. At the time Central prepared its bid, Central's personnel were engaged in preparing other bids.
10. The bid bond was not in possession of the County at such time as the County, after opening bids, examined the responsiveness of the bidders.

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11. The County opened and examined the bids in a reasonable and prudent manner, and did not conduct the opening and subsequent examination of the bids in a careless manner.

#### E. RECOMMENDATIONS

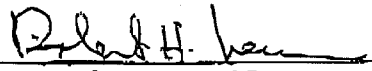
12. Based upon due consideration of the witnesses, exhibits, law and argument of counsel, and the foregoing findings, it is Recommended that the County Manager's recommendation to award Contract No. S-825 to Harry Pepper & Associates be upheld. It is respectfully submitted that the County Manager's recommendation is within the discretion public bodies are afforded, and there is an absence of a sufficient showing by the protestor of any dishonesty, fraud, misconduct or arbitrary or capricious conduct by Miami-Dade County or anyone in this process. The bid bond is not a mere technical document that may be waived or cured. The omission of a bid bond creates a material defect in the bid submitted by Central. In light of the magnitude of this defect, I am unable to conclude that the evidence submitted by Central is sufficient to demonstrate that the County's conclusion was arbitrary, illegal, dishonest, or fraudulent. The protest filed by Central Florida is hereby denied.

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This Report and Recommendation of the Hearing Examiner is being submitted to the Clerk of the Board on this 15<sup>th</sup> day of Nov, 2007.

  
Honorable Robert Newman  
Hearing Examiner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 15<sup>th</sup> day of Nov, 2007 to: Henry N. Gillman, Esq. Assistant County Attorney, 111 NW First Street Suite 2810, Miami, Florida 33128; Joesph Lawrence, Esq, The Museum Building, 300 SW 1<sup>st</sup> Avenue, Suite 150, Ft. Lauderdale, FL 33301 and David Garvin, Esq, 1200 Brickell Avenue, Suite 1480, Miami, FL 33131.